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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,520	08/03/2001	Donald Pham	CISCO-4113	8849
7590	01/07/2005		EXAMINER DUONG, DUC T	
Timothy A. Brisson Sierra Patent Group P.O. Box 6149 Stateline, NV 89449			ART UNIT 2663	PAPER NUMBER

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/922,520	PHAM ET AL.	
	Examiner	Art Unit	
	Duc T. Duong	2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 30 August 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,2,5-8,11-14 and 17-22 is/are rejected.

7) Claim(s) 3, 4, 9, 10, 15, 16, 23, and 24-30 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites the limitation "the peak performance rate" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 7, 8, 13, 14, 19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dawson (U.S. Patent 6,625,764 B1).

Regarding to claims 1, 7, 13, 19, and 22, Dawson discloses an apparatus for measuring the performance of a scalable network (Fig. 1) comprising means 30 for preparing the network for testing (Fig. 1 col. 5 lines 6-17); means 14 for sending a plurality of packets to a client node 24 (Fig. 1 col. 4 lines 6-18); and means 24 for counting said received packets (Fig. 1 col. 4 lines 34-42).

Dawson fails to teach for sending a constant stream of packets.

However, to arrange the apparatus of Dawson to transmit a constant stream of packets would have been obvious to a person of ordinary skill in the art to minimize the interpacket delay time. The motivation to do so would have been for supporting multimedia applications, which are highly delay sensitive.

Regarding to claims 2, 8, and 14, Dawson discloses for establishing a corresponding routing path for a session to be tested (Fig. 3 col. 5 lines 56-63; the test packet generator 14 generates an Ethernet frame 200 with a destination 202 and source addresses 204, which corresponds to a routing path).

5. Claims 5, 6, 11, 12, 17, 18, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dawson in view of Beverly, IV (U.S. Patent 6,732,182 B1).

Regarding to claims 5, 6, 11, 12, 17, 18, 20, and 21, Dawson discloses all the limitation with respect to claims 1, 7, 13, and 19 except for the constant stream of packets are sent over an OC-3 or OC-12 level network. However, Beverly discloses a system for generating a packet loss report, wherein test packets are sends over an OC-3 or OC-12 level (col. 4 lines 21-26). Thus, it would have been obvious to a person of ordinary skill in the art to employ a transmission of test packets over OC-3 and OC-12 network as taught by Beverly in Dawson's system for measuring the performance of high speed networks, such as SONET or SDH.

Allowable Subject Matter

6. Claims 3, 4, 9, 10, 15, 16, 23, and 25-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claim 24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 571-272-3122. The examiner can normally be reached on M-Th (9:00 AM-6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DD
DD

Chau T. Nguyen
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SUPERVISORY PATENT EXAMINER
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